of a building contract justifies a recovery for the contract price less the value of the work omitted. MacLean, J., *dissenting.*

Performance by the common law rule demands a strict adherence to the terms of the contract in order to constitute a discharge. *Leonard v. Dyer,* 26 Conn. 172; *Glacius v. Black,* 50 N. Y. 145. A recovery may be had in equity, however, where there is proof of a substantial performance. *Heckmann v. Pinkey,* 81 N. Y. 211; *Page v. Greeley,* 75 Ill. 400. The latter rule has been adopted in the courts of law in the case of building contracts, it being laid down that the contractor must act in good faith. *Nolan v. Whitney,* 88 N. Y. 648. And the omission must be of some inconsiderable details of construction which do not enter into the substance of the contract. *Bush v. Jones,* 144 Fed. 942; *Fauble v. Davis,* 48 Ia. 462. This is a question of fact for the trial court. *Rose v. O'Riley,* 111 Mass. 57; *Clark v. Collier,* 100 Cal. 256. And wherever the doctrine is recognized the *onus probandi* is on the plaintiff. *Timmer v. Jourgensen,* 144 N. Y. 650. And the amount recoverable is the contract price less full compensation for all defects. *Gleason v. Smith,* 9 Mass. 484; *Katz v. Bedford,* 77 Cal. 319.

CORPORATIONS—SALE OF STOCK—FIDUCIARY RELATIONSHIP—RESCISSION.—STERN V. STERN, 107 N. Y. SUPP. 900.—One in a trust relationship with another was induced by the fraudulent representations of that other to purchase stock in a certain company. Plaintiff, the defendant's son, bought stock in a mining and smelting company at request of his father, who, wilfully misstating facts as to the prospects and manufacturing ability of the said company—saying that the company could produce 60,000 tons of pig iron yearly, when he knew it could not—prevailed upon his son to purchase stock in the said company.—*Held,* that such violation of trust relationship was fraud, and that, together with a tender back of the stock, with a demand for consideration paid, were grounds for an action on the theory of rescission. Ingraham and Scott, J.J., *dissenting.*

The intentional misrepresentation of a material fact constitutes fraud. *Edelman v. Latchan,* 180 Pa. 419; *Stark v. Soule,* 9 N. Y. St. Rep. 555; *French v. Ryan,* 104 Mich. 625. The English rule is the same. *Derry v. Peake,* L. R. Cepp. Cas., 337. When parties deal in trust and confidence, the omission of one of the parties to an agreement to make inquiries as to the truth of the facts stated by that other, cannot be implied to him as negligence, and is no defense in an action of fraud. *Mead v. Bunn,* 32 N. Y. 275; *Gwain v. Masterson,* 152 Ind. 157; *Watson v. Brown,* 113 Iowa 308; *Hunt v. Barker,* 22 R. I. 18. In an equitable action to rescind a contract because of fraud, it is sufficient for the plaintiff to offer in his complaint to restore what he has received, where he has acted promptly upon discovery of the fraud. *Rohrof v. Schutte,* 154 Ind. 183.

FALSE IMPRISONMENT—PROBABLE CAUSE—ABANDONMENT OF PROSECUTION.—SANDERS V. DAVIS, 44 So. 979 (ALA.).—*Held,* that want of probable cause for plaintiff's arrest cannot be inferred in an action for false imprisonment, from the failure or abandonment of the prosecution.

Although this holding of the court is the established rule in actions for malicious prosecution, *Staub v. Van Bethuysen,* 36 La. Ann. 467; *Cooley on Torts,* page 179; in actions for false imprisonment it is decidedly the exception. In such cases, voluntary dismissal of proceedings on which plaintiff was arrested, *Beebe v. De Baun,* 8 Ark. 510; or his discharge from arrest, *Rosenkranz v. Hass,* 20 N. Y. Supp. 880; or his acquittal after trial

or examination, *Lezler v. Huntington*, 24 La. Ann. 330; but not, however, a *nolle prosequi* after disagreement of jury, *Burbanks v. Lefovsky*, 134 Mich. 384, is presumptive evidence of want of probable cause for his arrest, but is not invariably fatal to justification by probable cause. *Allen v. Wright*, 8 C. and P. 522; *Murray v. Friensberg*, 15 N. Y. Supp. 450. Even the acquittal of the plaintiff on a criminal charge, although presumptive evidence of want of probable cause, does not bar the defendant, in an action for false imprisonment, from proving that said acquittal was, in fact, an error, and thus destroying its presumptive effect. *Cahill v. Fitzgibbon*, 16 L. R. Qr. 371.

MASTER AND SERVANT—ACTS OF SERVANT—DIRECTION OF FOREMAN—METHOD OF WORK.—ANDERSON V. MILLIKEN BROS., 108 N. Y. SUPP. 61.—Plaintiff's intestate and another were employed to put certain braces in an elevator bin of great depth, and were directed by the foreman to use planks placed across the braces to stand on. The foreman gave them no instructions as to how to place the planks, and did not furnish any ropes or fastenings. Intestate and his companion merely laid the planks across the braces without fastenings of any sort, and one of the planks slipped under intestate and precipitated him to the bottom of the bin, causing his death. *Held*, that, though intestate and his companion placed the planks, neither of them devised such method or followed it until ordered to do so by defendant's foreman in charge of the work, and hence defendant was responsible for failure to provide a safe scaffold, as required by the Labor Law, Laws 1897, p. 467, c. 415, Sec. 18.

At common law the master is not liable for injuries caused by a defective scaffold erected by the servant himself. *Channon v. Sanford*, 70 Conn. 573; *Kimmer v. Weber*, 151 N. Y. 417. The Labor Laws of New York, Laws of 1907, p. 467, c. 415, Sec. 8, provide that "a person employing or directing another to perform labor of any kind in the erection . . . of a house, building, or structure, shall not furnish, or erect, or cause to be erected, for the performance of such labor, scaffoldings . . . which are unsafe, unsuitable, or improper. . . ." And the courts in construing this statute have held that where proper materials were at hand, by the use of which safe and suitable scaffolds could have been constructed, and where the dangerous conditions were caused by the failure of the employee to use the materials so provided, the master could not be held liable. *Williams v. First Nat. Bank*, 118 App. Div. 555; *Rotondo v. Smyth*, 92 App. Div. 153. However, this statute is a positive prohibition placed upon the master from which he will not be excused because of his own negligence or the carelessness of his servant, and extends to responsibility for the safety of the scaffold itself and for details of its construction. *Steward v. Ferguson*, 164 N. Y. 553.

MASTER AND SERVANT—FELLOW SERVANTS—CAR INSPECTORS.—KILEY V. RUTLAND R. CO., 68 ATL. 713 (VT.).—*Held*, that a car inspector is not a fellow servant of the conductor of a train, but is intrusted with a duty resting on the railroad company, which it cannot delegate so as to relieve itself from liability for non-performance, whether the cars carried be its own or foreign cars which the company is required by statute to receive and transport.

It is a matter of judicial disagreement whether a master can discharge the duty of inspection and repair by selecting and employing competent persons. *Essex County Electric Co. v. Kelly*, 57 N. J. L. 100. A great number of decisions, including very recent ones, hold that an inspector and conductor are fellow servants. *Shuster v. Philadelphia B. & W. R. Co.*, 62 Atl.